

United States Department of Justice
Office of the United States Trustee
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Lisa L. Lambert
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for the United States Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

**NATIONAL RIFLE ASSOCIATION OF
AMERICA and SEA GIRT LLC**

Debtors.

Chapter 11

Case No. 21-30085-hdh11

Jointly Administered

Emergency Setting

Hearing Date: 03/02/2021

Hearing Time: 3:00 p.m.

**U.S. TRUSTEE'S OBJECTION TO SECOND MOTION TO CONTINUE HEARING ON
APPLICATION TO EMPLOY BREWER ATTORNEYS & COUNSELORS (Dkt No 84)**

TO THE HONORABLE HARLIN D. HALE,
UNITED STATES BANKRUPTCY JUDGE:

The United States Trustee for Region 6 objects to the Second Motion to Continue Hearing on Application to Employ Brewer Attorneys & Counselors, LLP (respectively, "Brewer Continuance Request," Dkt No. 265; "Brewer Application," Dkt No. 84) and respectfully states:

Overview

The Brewer Firm seeks to defer the hearing on the Brewer Application so it can focus on the six-day trial of the Motion to Dismiss or Appoint a Trustee and Motion to Appoint an Examiner. Continuing the hearing to the hearing on the Motion to Dismiss or to Appoint a Trustee de facto

denies the objection. At the hearing on the Motion to Dismiss or to Appoint a Trustee, Brewer must defend an investigation into its own fees as well as the Debtor's payment to it. The Debtor should be advised by a disinterested professional on these points.

The inadequate disclosures, the pre-petition time billed for invoicing bankruptcy-related matters, and now Brewer's explanation about its role in the Motion to Dismiss or Appoint a Trustee highlight that the Brewer Firm is acting as section 327(a) counsel even though it lacks the disinterestedness required to serve that role. This issue should be resolved or contained now rather than at the hearing on a Motion to Dismiss or to Appoint a Trustee.

Factual Statement and Argument

1. Two weeks ago—on February 19—the Brewer Firm obtained its first continuance on the hearing on the Brewer Application.

2. The United States Trustee objected.

3. The hearing was continued and set for March 4, 2021. At the time of the continuance, no one indicated that the Brewer Application needed to be set with the motion to dismiss or to appoint a trustee.

4. The United States Trustee has alleged that the Brewer firm is disqualified even as to the matters on which it seeks representation because of conflicts. These conflicts are exacerbated by the Brewer Firm's expansive role, which the United States Trustee contends is de facto a section 327(a) general bankruptcy counsel role rather than a special counsel role.

5. The Debtor expresses concern about handling the motion to dismiss or appoint a trustee without the Brewer Firm.

6. First, inconvenience is not a basis to suspend ethical mandates for bankruptcy employment. Although the Brewer says it is willing to waive fees if disqualified, waiving fees

does not resolve a conflict of interest, especially in a bankruptcy case. It may be in the interest of the estate to acknowledge that the Brewer firm invoicing was incorrect or to make other hard management decisions that the Brewer Firm would not recommend due to conflicts of interest.

7. Second, the statement that the Brewer Firm is needed for these matters underscores the United States Trustee's allegation that the Brewer Firm is serving more as section 327(a) counsel than as section 327(e) counsel. The employment application represents that the Brewer Firm will provide "[a]ssistance to Debtors' bankruptcy counsel, to facilitate the efficient handling of matters in these Cases that implicate BAC's institutional knowledge and prepetition." Collins Declaration in Support of Brewer Application, ECF 84-2, p. 4 of 16. The Brewer Firm has not provided requested post-petition time records, but the Brewer Firm admits it is integral to the pivotal bankruptcy litigation. Assistance is not issuing requests for production, handling depositions, or managing a six-day trial.

8. The Debtor retained two bankruptcy firms under section 327(a). The pending issues – the motion to dismiss, motion to appoint a trustee, and motion to appoint an examiner – exist under the Bankruptcy Code and arise frequently in bankruptcy cases. While the facts of the case are unique, bankruptcy practitioners handle these issues recurringly.

9. Finally, the Brewer Firm alleges 27 pages of supplemental evidence establish "the office [of the United States Trustee] is going to raise at the hearing objections other than those set forth in its written objection." These new issues are unstated. The United States Trustee does not intend to raise new hearing objections, and the designated exhibits relate to the pending issues.

Conclusion

Wherefore, the United States Trustee respectfully requests that the motion to continue be denied.

DATED: March 2, 2021

Respectfully submitted,

WILLIAM T. NEARY
UNITED STATES TRUSTEE

/s/ Lisa L. Lambert
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Certificate of Service

I certify that on March 2, 2021, I served a copy of this document by electronic case filing notice on those requesting ECF notice and by email as listed below:

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